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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Kimberly Brennan, an individual; Carmen
Ponce, an individual,

Plaintiffs,

vs.

Johnny Hernandez, an individual; Crete
Carrier Corporation, an Arizona foreign
for-profit corporation; John and Jane Does
1-10; Black Corporations 1-10; and White
Partnerships 1-10,

Defendants.

Robert Warix, Individually,

Plaintiff,

vs.

Johnny Hernandez and Jane Doe
Hernandez, Individually and as Husband
and Wife; Crete Carrier Corporation, a
Foreign For-Profit Corporation; John Does
I-X and Jane Does I-X, Individually and as
Husband and Wife; Black Corporations I-
X and White Limited Partnerships I-X,

Defendants.

Case No.: CV-24-01740-PHX-DJH

**JOINT PROPOSED CASE
MANAGEMENT REPORT**

(Assigned to the Honorable Diane J.
Humetewa)

Case No.: CV-24-01741-PHX-DJH

The parties by and through counsel undersigned, conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules on September 10, 2024 and prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 is scheduled for October 17, 2024, at 11:30 a.m. and the conference will be held in Courtroom 605, Sandra Day O'Connor U.S. Federal Courthouse, 401 W. Washington Street, Phoenix, Arizona 85003.

1. The parties who attended the Rule 26(f) meeting and assisted in developing the Case Management Report and the date of the meeting.

Brian Plant for Plaintiff Robert Warix.

Sean A. Woods for Plaintiffs Kimberly Brennan and Carmen Ponce.

Clarice A. Spicker and Lauren D. Norton for Defendant Crete Carrier Corporation.

2. A short statement of the nature of the case (3 pages or less), including a description of each claim and defense.

Plaintiff Robert Warix's Statement – On April 6, 2022, Plaintiff Robert Warix was a restrained passenger in a vehicle operated by non-party, northbound on North 27th Avenue and West Van Buren Street. Defendant Johnny Hernandez was operating a 2021 Freightliner Tractor Trailer registered and owned by his employer Defendant Crete Carrier Corporation northbound on North 27th Avenue and West Van Buren Street, while making a right turn Defendant's trailer collided with the vehicle that Plaintiff Robert Warix was a passenger in, causing the collision.

Plaintiffs Carmen Ponce and Kimberly Brennan's Statement – On April 6, 2022, Plaintiffs Kimberly Brennan and Carmen Ponce (collectively, "Plaintiffs") were

1 passengers in a vehicle (the “Vehicle”) at the intersection of North 27th Avenue and West
 2 Van Buren Street in Phoenix, Arizona. The Vehicle was stopped in the far-right northbound
 3 lane of 27th Avenue at the stoplight at Van Buren St. Defendant Johnny Hernandez
 4 (“Johnny”), an employee of Defendant Crete Carrier Corporation (“Crete”) acting in the
 5 course and scope of his employment, was driving a Semi-truck and trailer (the “Semi”)
 6 with a gross vehicle weight (“GVWR”) between 10,001 and 26,000 pounds.

7 Johnny drove his Semi in the lane to the left of the Vehicle and attempted to make
 8 a right-handed turn around the Vehicle onto Eastbound Van Buren St. Johnny failed to
 9 check his positioning and the positioning of obstructions – including the Vehicle – around
 10 his Semi. Johnny made a right-handed turn and caused his Semi to hit the Vehicle during
 11 the turn. Johnny’s Semi dragged the Vehicle over the curb of the road and into obstructions.
 12 The Plaintiffs – as passengers in the Vehicle – took on the brunt of the force of the impact
 13 caused by Johnny. Johnny was cited with violation of A.R.S. § 28-701(A).

14 The force was so much that Plaintiffs suffered severe bodily injuries from this
 15 collision. Plaintiffs suffered bodily injuries for which they required ongoing medical
 16 treatment, and for which they were charged or given future estimates for treatment that are
 17 currently in the tens of thousands of dollars and will increase as further medical treatment
 18 is warranted. Plaintiffs continue to suffer side effects of their injuries, and have continued
 19 bodily injuries, potential lost wages, pain and suffering, and loss of enjoyment of life.
 20 Plaintiffs bring claims for negligence and negligence per se against Johnny and Crete.

21 **Defendant Crete Carrier Corporation Statement** – On April 6, 2022, Johnny
 22 Hernandez (hereinafter “Hernandez”) was operating a 2021 Freightliner tractor-trailer
 23 while in the course and scope of his employment with Defendant Crete Carrier Corporation
 24 (hereinafter “Crete”). Hernandez was attempting to make a right turn from northbound N
 25 27th Ave onto eastbound W Van Burn St when contact was made with an adverse vehicle
 26 owned by Taylor Brandon Wilkins and operated by Non-Party at Fault Gary Durwin Hand
 27 (hereinafter “Hand”). The passengers in Hand’s vehicle were Plaintiff Robert Warix
 28 (hereinafter “Warix”), Plaintiff Kimberly Brennan (hereinafter “Brennan”), and Leila

1 Torres De Leon. Plaintiff Carmen Ponce (hereinafter “Ponce”) alleges she was a passenger
2 in the adverse vehicle, though she is not listed on the AZDPS Report. Much of the damage
3 to the adverse vehicle was to the left middle to rear driver side indicating that Non-Party at
4 Fault Gary Durwin Hand (hereinafter “Hand”), attempted to pass on the right side of
5 Hernandez while Hernandez was executing the right turn. Overall, Hand should have
6 exercised caution when driving as Hand would have been on notice that the tractor-trailer
7 was in the process of making a right turn. Given the facts, there is comparative fault on
8 behalf of Hand. Negligence on behalf of Hernandez has been admitted and the Parties have
9 agreed to dismiss Hernandez from the case.

10 **3. The jurisdictional basis for the case.**

11 Plaintiffs Kimberly Brennan, Carmen Ponce, and Robert Warix are all domiciled in
12 the State of Arizona. Thus, they are considered citizens of the State of Arizona. Defendant
13 Crete Carrier Corporation is a Nebraska Foreign Corporation incorporated in Nebraska and
14 its principal place of business in Lincoln, Nebraska. Thus, Crete is considered a citizen of
15 the State of Nebraska.

16 The amount in controversy exceeds \$75,000 because Plaintiff Robert Warix has
17 certified this case as Tier 2 in his Complaint and alleges severe bodily and mental injuries,
18 pain and suffering, loss of enjoyment of life, and future medical expenses in excess of
19 \$75,000. Plaintiffs Kimberley Brennan and Carmen Ponce claim personal injuries as a
20 result of Defendant’s alleged liability stemming from an accident that occurred on April 6,
21 2022. Plaintiffs Brennan and Ponce asserted in their complaint that this is a Tier 3 case for
22 damages in excess of \$300,000 and are seeking punitive damages, amongst lost wages and
23 personal injury damages. Accordingly, the amount in controversy exceeds \$75,000. Thus,
24 this Court has jurisdiction pursuant to 28 U.S.C. § 1332.

25 **4. Any parties which have not been served and an explanation of why they**
26 **have not been served; and any parties which have been served but have not answered**
27 **or otherwise appeared.**

1 Defendant Johnny Hernandez was served by Publication. The parties have agreed
2 to dismiss Defendant Johnny Hernandez in agreement to admit he was within the course
3 and scope and negligence.

4 **5. A statement of whether any party expects to add additional parties to**
5 **the case or otherwise to amend pleadings.**

6 Crete added Gary Durwin Hand to this case as a Non-Party at Fault. The parties do
7 not expect to add additional parties to the case or to amend their pleadings, but reserve the
8 right to do so, if necessary, after completing additional discovery and investigation.

9 **6. A list of contemplated motions and a statement of the issues to be decided**
10 **by these motions.**

11 Significant discovery has not yet been commenced and could demonstrate the
12 appropriateness of motions. Therefore, the parties reserve the right to file motions,
13 including dispositive and/or Daubert motions, based upon information learned in discovery
14 at the appropriate time. Defendant Crete also anticipates filing a motion for summary
15 judgment in relation to Plaintiffs' punitive damages claim.

16 **7. Whether the case is suitable for reference to a United States Magistrate**
17 **Judge for trial.**

18 The parties do not consent to this case's assignment to a United States Magistrate
19 Judge.

20 **8. The status of related cases pending before other Courts or other judges**
21 **of this Court.**

22 The parties are not aware of any other related cases.

23 **9. A statement of when the parties exchange or will exchange Fed.R.Civ.P.**
24 **26(a) Initial Disclosures.**

25 The parties will exchange their Initial Disclosures on October 4, 2024.

26 **10. A written plan relating to disclosure, or discovery of electronically**
27 **stored information.**

1 The parties do not anticipate any issues with the disclosure or discovery of
2 electronically stored information at this time. The parties agree to consult as electronic
3 disclosures occur to ensure that no issues arise. Additionally, the Parties agree to make
4 appropriate inquiries to their clients for purposes of preserving ESI in their possession that
5 may relate in any way to the claims and defenses in this matter in compliance with the
6 Federal Rules of Civil Procedure. The Parties further agree that they will produce EDI
7 electronically in its native form by email, ShareFile, Dropbox, or other secure file sharing
8 methods..

9 **11. A discussion of any issues relating to claims of privilege or work product.**

10 None at this time.

11 **12. A discussion of necessary discovery, including:**

12 **a. The extent, nature, and location of discovery anticipated by the**
13 **parties.**

14 Plaintiffs Robert Warix, Kimberly Brennan, and Carmen Ponce anticipate deposing
15 any of Defendant employee(s) as disclosed; any Defendant employees responsible for
16 maintaining any and all written or electronic logs, safety training, and compliance with
17 applicable State and Federal trucking laws and regulations; all police officers and other
18 first responders; and any liability and damages experts disclosed by Defendant. Written
19 discovery – request for admissions, requests for production/inspection, interrogatories.

20 Defendant Crete Carrier Corporation's discovery will be focused on Plaintiff's
21 alleged injuries and damages as well as Non-Party at Fault Gary Durwin Hand's
22 comparative fault. Defendant Crete Carrier Corporation anticipates deposing Plaintiffs,
23 Non-Party at Fault Gary Durwin Hand, police officers and first responders to the accident,
24 Plaintiffs' treating providers, and Plaintiffs' experts. Defendant Crete Carrier Corporation
25 believes most if not all of the depositions will take place in Arizona as that is where the
26 accident occurred, Plaintiffs reside, and likely where Plaintiffs treated. Defendant Crete
27 Corporation also intends to send written discovery including requests for admissions,
28 requests for production, and interrogatories.

b. The scope of discovery and whether discovery should be conducted in phases or should be limited to focus on particular issues.

The parties do not believe discovery needs to be done in phases.

c. Suggested changes, if any, to the discovery limitations imposed by the Federal Rules of Civil Procedure.

Plaintiffs' Position: None at this time.

Defendant Crete Carrier Corporation's Position: Defendant Crete Carrier Corporation would like to be able to serve 25 written interrogatories on any other **party**, rather than per side, in line with Fed.R.Civ. P. 33(a)(1) and Fed.R.Civ.P. Defendant Crete Carrier Corporation would like to highlight this request as occasionally there is a limitation per **side**. As there are three Plaintiffs and one Defendant the ability to serve the allotted number of interrogatories, requests for production, and requests or admission per **party** is incredibly important in order for Defendant Crete Carrier Corporation to gather the discovery it needs related to Plaintiffs' claims injuries and damages.

d. The number of hours permitted for each deposition.

The parties believe that a limit of one day of four (4) hours per deposition is adequate.

13. Proposed specific dates for each of the following.

a. A deadline for completion of fact discovery¹ by **February 28, 2025**.

b. Dates for complete expert disclosures under Fed.R.Civ.P. 26(a)(2)(A)-(E)²:

¹ Discovery requests must be served and depositions noticed sufficiently in advance of this date to ensure reasonable completion by this deadline, including time to resolve discovery disputes. Parties who fail to timely disclose relevant information will be precluded from using it in the case and may be subject to other sanctions. Parties who unreasonably postpone disclosure of relevant information to the end of the discovery period may also be subject to sanctions.

² No expert witness not timely disclosed will be permitted to testify unless the party offering such witness demonstrates: (a) that the necessity of such expert witness could not have been reasonably anticipated at the time of the deadline for disclosing such expert

Plaintiff's Expert Disclosures by **March 14, 2025**.
 Defendants Expert Disclosure by **May 2, 2025**.
 Rebuttal Disclosures by **June 6, 2025**.

- c. Completion of Expert Depositions by **August 8, 2025**.
- d. Dispositive Motions, including any Daubert motion, by: **September 12, 2025**.
- e. Good Faith Settlement Discussions by: **July 25, 2025**.

14. Whether a jury trial has been requested and whether the request for a jury trial is contested and, if so, the reasons why the request is contested.

The parties have requested a jury trial.

15. The estimated length of trial.

Five (5) days.

16. The prospect for settlement, including any request of the Court for assistance in settlement efforts, including referral to a United States Magistrate Judge for the limited purposes of settlement.

The parties anticipate requesting a settlement conference or conducting a private mediation prior to July 25, 2025.

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witness; (b) the Court and opposing counsel or unrepresented party were promptly notified upon discovery of such expert witness; and (c) that such expert witness was promptly proffered for deposition. *See Wong v. Regents of the Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005).

